

AMENDMENTS TO LB 943

1                   1.     Strike original section 2 and insert the following  
2 new sections:

3                   "Section 1. Section 28-101, Revised Statutes Supplement,  
4 2002, is amended to read:

5                   28-101. Sections 28-101 to 28-1348 and sections 2 and 3  
6 of this act shall be known and may be cited as the Nebraska  
7 Criminal Code.

8                   Sec. 2.     (1) A person commits the offense of  
9 strangulation if the person knowingly or intentionally impedes the  
10 normal breathing or circulation of the blood of another person by  
11 applying pressure on the throat or neck of the other person.

12                   (2) Except as provided in subsection (3) of this section,  
13 strangulation is a Class IV felony.

14                   (3) Strangulation is a Class III felony if:

15                   (a) The person used or attempted to use a dangerous  
16 instrument while committing the offense;

17                   (b) The person caused serious bodily injury to the other  
18 person while committing the offense; or

19                   (c) The person has been previously convicted of  
20 strangulation.

21                   (4) It is an affirmative defense that an act constituting  
22 strangulation was the result of a legitimate medical procedure.

23                   Sec. 3.     (1) No person shall knowingly solicit, coax,  
24 entice, or lure or attempt to solicit, coax, entice, or lure (a) a

1 child sixteen years of age or younger or (b) a peace officer who is  
2 believed by such person to be a child sixteen years of age or  
3 younger, by means of a computer as that term is defined in section  
4 28-1343, to engage in an act which would be in violation of  
5 sections 28-317 to 28-321.

6 (2) A person who violates this section is guilty of a  
7 Class III felony. If a person who violates this section has  
8 previously been convicted of a violation of this section or section  
9 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, or 28-317  
10 to 28-321, the person is guilty of a Class II felony.

11 Sec. 4. Section 28-318, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 28-318. As used in sections 28-317 to 28-321, unless the  
14 context otherwise requires:

15 (1) Actor means a person accused of sexual assault;

16 (2) Intimate parts means the genital area, groin, inner  
17 thighs, buttocks, or breasts;

18 (3) Past sexual behavior means sexual behavior other than  
19 the sexual behavior upon which the sexual assault is alleged;

20 (4) Serious personal injury means great bodily injury or  
21 disfigurement, extreme mental anguish or mental trauma, pregnancy,  
22 disease, or loss or impairment of a sexual or reproductive organ;

23 (5) Sexual contact means the intentional touching of the  
24 victim's sexual or intimate parts or the intentional touching of  
25 the victim's clothing covering the immediate area of the victim's  
26 sexual or intimate parts. Sexual contact shall also mean the  
27 touching by the victim of the actor's sexual or intimate parts or

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1 the clothing covering the immediate area of the actor's sexual or  
2 intimate parts when such touching is intentionally caused by the  
3 actor. Sexual contact shall include only such conduct which can be  
4 reasonably construed as being for the purpose of sexual arousal or  
5 gratification of either party. Sexual contact shall also include  
6 the touching of a child with the actor's sexual or intimate parts  
7 on any part of the child's body for purposes of sexual assault of a  
8 child under section 28-320.01;

9 (6) Sexual penetration means sexual intercourse in its  
10 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any  
11 intrusion, however slight, of any part of the actor's or victim's  
12 body or any object manipulated by the actor into the genital or  
13 anal openings of the victim's body which can be reasonably  
14 construed as being for nonmedical or nonhealth purposes. Sexual  
15 penetration shall not require emission of semen;

16 (7) Victim means the person alleging to have been  
17 sexually assaulted;

18 (8) Without consent means:

19 (a) (i) The victim was compelled to submit due to the use  
20 of force or threat of force or coercion, or (ii) the victim  
21 expressed a lack of consent through words, or (iii) the victim  
22 expressed a lack of consent through conduct, or (iv) the consent,  
23 if any was actually given, was the result of the actor's deception  
24 as to the identity of the actor or the nature or purpose of the act  
25 on the part of the actor;

26 (b) The victim need only resist, either verbally or  
27 physically, so as to make the victim's refusal to consent genuine

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1 and real and so as to reasonably make known to the actor the  
2 victim's refusal to consent; and

3 (c) A victim need not resist verbally or physically where  
4 it would be useless or futile to do so; and

5 (9) Force or threat of force means (a) the use of  
6 physical force which overcomes the victim's resistance or (b) the  
7 threat of physical force, express or implied, against the victim or  
8 a third person that places the victim in fear of death or in fear  
9 of serious personal injury to the victim or a third person where  
10 the victim reasonably believes that the actor has the present or  
11 future ability to execute the threat.

12 Sec. 5. Section 28-1463.05, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 28-1463.05. (1) It shall be unlawful for a person to  
15 knowingly possess with intent to rent, sell, deliver, distribute,  
16 trade, or provide to any person any visual depiction of sexually  
17 explicit conduct which has a child as one of its participants or  
18 portrayed observers.

19 (2) Any person who violates this section shall be guilty  
20 of a Class ~~IV~~ IIIA felony for each offense.

21 Sec. 7. Section 29-4003, Revised Statutes Supplement,  
22 2002, is amended to read:

23 29-4003. (1) Except as provided in subsection (2) of  
24 this section, the Sex Offender Registration Act shall apply to any  
25 person who on or after January 1, 1997:

26 (a) Pleads guilty to or is found guilty of:

27 (i) Kidnapping of a minor pursuant to section 28-313,

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1 except when the person is the parent of the minor and was not  
2 convicted of any other offense in this section;

3 (ii) False imprisonment of a minor pursuant to section  
4 28-314 or 28-315;

5 (iii) Sexual assault pursuant to section 28-319 or  
6 28-320;

7 (iv) Sexual assault of a child pursuant to section  
8 28-320.01;

9 (v) Sexual assault of a vulnerable adult pursuant to  
10 subdivision (1)(c) of section 28-386;

11 (vi) Incest of a minor pursuant to section 28-703;

12 (vii) Pandering of a minor pursuant to section 28-802;

13 (viii) Visual depiction of sexually explicit conduct of a  
14 child pursuant to section 28-1463.03 or 28-1463.05;

15 (ix) Knowingly possessing any visual depiction of  
16 sexually explicit conduct which has a child as one of its  
17 participants or portrayed observers pursuant to section 28-813.01;

18 (x) Criminal child enticement pursuant to section 28-311;

19 ~~or~~

20 ~~(\*)~~ (xi) Child enticement by means of a computer pursuant  
21 to section 3 of this act; or

22 (xii) Attempt, solicitation, or conspiracy to commit an  
23 offense listed in subdivisions (1)(a)(i) through ~~(1)(a)(ix)~~  
24 (1)(a)(xi) of this section;

25 (b) Enters the state and has pleaded guilty to or has  
26 been found guilty of any offense that is substantially equivalent  
27 to a registrable offense under subdivision (1)(a) of this section

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1 by any state, territory, commonwealth, or other jurisdiction of the  
2 United States, by the United States Government, or by court martial  
3 or other military tribunal; or

4 (c) Is incarcerated in a jail, a penal or correctional  
5 facility, or any other public or private institution or is under  
6 probation or parole as a result of pleading guilty to or being  
7 found guilty of a registrable offense under subdivision (1)(a) or  
8 (b) of this section prior to January 1, 1997.

9 (2) In the case of a person convicted of a violation of  
10 section 28-311, 28-313, 28-314, or 28-315, the convicted person  
11 shall be subject to the Sex Offender Registration Act, unless the  
12 sentencing court determines at the time of sentencing, in light of  
13 all the facts, that the convicted person is not subject to the act.  
14 The sentencing court shall make such determination part of the  
15 sentencing order.

16 (3) A person appealing a conviction of a registrable  
17 offense under this section shall be required to comply with the act  
18 during the appeals process.

19 Sec. 8. Original sections 28-318, 28-1463.05, and  
20 29-110, Reissue Revised Statutes of Nebraska, and sections 28-101  
21 and 29-4003, Revised Statutes Supplement, 2002, are repealed.

22 Sec. 9. Since an emergency exists, this act takes effect  
23 when passed and approved according to law."

24 2. On page 5, after line 5, insert the following new  
25 subsection:

26 "(10) The changes made to this section by this  
27 legislative bill shall apply to offenses committed prior to the

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1 effective date of this act for which the statute of limitations has  
2 not expired as of such date and to offenses committed on or after  
3 such date."

4                   3. Renumber the remaining section accordingly.